

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

BRETT MCKINNEY,	)	CV 12-75-M-DWM
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
FEDERAL EXPRESS CORPORATION,	)	
a Delaware Corporation, and CORY	)	
MICHAEL PLUTE,	)	
	)	
Defendant.	)	
_____	)	

Federal Express Corporation filed a motion to dismiss on May 8, 2012. (*See* doc. 3). Federal Express claims that the plaintiff, Brett McKinney, failed to timely serve his complaint. McKinney's response to the motion was due on May 29, 2012, but he did not file one. The Court grants Federal Express's motion.

Under Local Rule 7.1(d)(1)(B), "Failure to file a response brief may be deemed an admission that the motion is well-taken."

This case was removed from Montana state court on May 8, 2012.

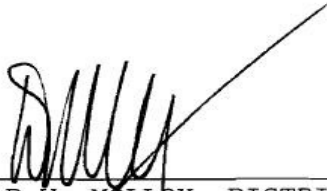
Montana's Rules of Civil Procedure require plaintiffs to serve their complaints within three years of filing. Mont. R. Civ. P. 4(t)(1). Under Rule 4(t)(1), "[T]he court, upon motion or on its own initiative, must dismiss an action without prejudice if the plaintiff" fails to file his complaint within three years. *Id.*

McKinney filed his complaint in state court on June 6, 2008. He therefore had to serve Federal Express by June 6, 2011. McKinney did not do so, though, until April 19, 2012, well after the three-year deadline.

Federal Express argues that this matter should be dismissed with prejudice because McKinney has additionally failed to satisfy the applicable statute of limitations. Rule 4(t)(1), however, counsels in favor of dismissal without prejudice at this point in the litigation.

Accordingly, IT IS ORDERED that Federal Express Corporation's motion to dismiss (doc. 3) is GRANTED. Brett McKinney's complaint against Federal Express Corporation is DISMISSED WITHOUT PREJUDICE.

DATED this 30<sup>th</sup> day of May 2012.

  
\_\_\_\_\_  
DONALD W. MOLLOY, DISTRICT JUDGE  
UNITED STATES DISTRICT COURT  
